Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

H. BEATTY CHADWICK,

Petitioner,

v.

BARBARA JEAN CROWTHER CHADWICK,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

SUPPLEMENTAL APPENDIX

H. BEATTY CHADWICK
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34pp

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK : CIVIL ACTION

v. : No. 00-CV-1130

JAMES JANECKA, et al : (Filed Dec. 11, 2000)

ARNOLD C. RAPOPORT
UNITED STATES MAGISTRATE JUDGE

REPORT AND RECOMMENDATION

Before the Court is a counseled petition for a writ of habeas corpus filed by H. Beatty Chadwick pursuant to 28 U.S.C. §2254. The Petitioner is currently incarcerated in the Delaware County Prison at Thornton, Pennsylvania. For the reasons that follow, it is recommended that this petition be dismissed and denied without an evidentiary hearing.

PROCEDURAL HISTORY

STATE COURT PROCEEDINGS:

This case arises from a pending divorce action in the Court of Common Pleas of Delaware County, Pennsylvania.[1] On November 23, 1992, Barbara Jean Crowther

[1] The facts set forth in this procedural history have been taken from the Petition for Writ of Habeas Corpus, the District Attorney's Response, the Motion for Leave to Intervene, the Motion to Dismiss the Petition, the petitioner's Reply and Memorandum, the Intervenor's letter brief, the intervenor's brief in support of the motion to dismiss, the respondent's brief on the issue of exhaustion, the petitioner's brief on the issue of exhaustion, the briefs of the petitioner, intervenor and respondent on the merits, the respondents motion to dismiss him as a party, and the interenor's letter in response, the state court records

(Continued on following page)

Chadwick (Intervenor, hereinafter referred to as wife) filed a complaint in divorce against petitioner, requesting *inter alia* alimony *pendente lite* and equitable distribution of marital assets. At a conference held on February 23, 1993 the petitioner disclosed that on February 9, 1993 he had unilaterally transferred $2,502,000 to a Gibraltar company named Maison Blanche Limited to satisfy an alleged debt pursuant to a joint venture agreement allegedly entered into by petitioner on August 30, 1990, two years prior to the marital separation. Wife testified and continues to maintain that she had no knowledge of this joint venture agreement and only learned of the agreement, debt and transfer of funds from the petitioner's testimony on February 23, 1993. The transfer of funds allegedly consisted of funds from an Individual Retirement Account (IRA) in the amount of $869,106, funds from an investment account in the amount of $1,100,894, and $532,000 in securities. These assets comprised the bulk of the petitioner's property and are alleged by the wife to be marital property.

The petitioner testified at several hearings before the Court of Common Pleas of Delaware County that the assets were transferred only to satisfy his debt under the joint venture agreement, and that once the assets were transferred, he ceased any control or ownership rights over them. He continues to maintain that he does not possess the assets, nor have the ability to control the transferred assets.

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attached thereto, and the prior federal court habeas files, 95-CV-103 and 97-CV-4680.

Following the petitioner's disclosure of the transfer of assets, the wife filed an action with the Supreme Court of Gibraltar seeking the disclosure of the location of the assets and the names of the beneficial owners of Maison Blanche Limited. On March 2, 1994 the Supreme Court of Gibraltar entered an order directing Maison Blanche to disclose that information. A subsequent affidavit by purported counsel for Maison Blanche indicated that in February 1993 Maison Blanche received a total of $1,970,000 from an American securities firm, from which the petitioner had testified the securities were transferred; that on April 8, 1993 $896,106 of those funds were transferred from Maison Blanche to Chemical Bank in New York "for [an] account . . . in favour of H.B. Chadwick Account . . . "; that the rest of the money was transferred to other accounts, including a bank account in Luxembourg; and that $532,000 in securities was never transferred to Maison Blanche. (Affidavit of James David Hassan, April 26, 1994).

On April 27, 1994 the wife filed an emergency petition in the Court of Common Pleas of Delaware County to freeze the petitioner's assets and requested the return of the transferred assets. After a hearing on April 29, 1994 the court entered an order freezing all assets in the petitioner's name and ordering the petitioner to disclose his accounts.

On July 19, 1994 the wife filed an emergency petition for special relief requesting *inter alia* the return of the $2,502,000 originally transferred to Maison Blanche, and that they be deposited into a joint escrow account. Wife alleged in her petition, with documentation attached, that Maison Blanche transferred $869,106 to an account for benefit of H.B. Chadwick, which account was opened two

days prior to the transfer; that the funds were moved from this account to other accounts pursuant to the direct instructions of H.B. Chadwick; and that H.B. Chadwick transferred some of the funds after the April 29, 1994 order freezing his assets.

A hearing was held on July 22, 1994, during which the petitioner and wife testified. The wife maintained that she presented sufficient evidence to prove that the petitioner had full control over the $2,502,000 that he transferred to Maison Blanche. She testified that the exact amount that the petitioner had taken from his IRA was returned to the United States to an account for the benefit of H.B. Chadwick within sixty days of the original transfer, which was within the time allowed by the Internal Revenue Service to avoid penalties for early withdrawal. The petitioner objected to the brief notice he received prior to the hearing and to the admission of the wife's documentary evidence, which evidence was not admitted by the court.

At the conclusion of the hearing the court ordered that: 1. the petitioner return the $2,500,000 that he transferred out of the United States in February 1993 into an escrow account to be held by counsel; 2. the petitioner be enjoined from further assigning, concealing, secreting or dissipating marital assets; 3. the marital home be sold immediately; 4. the petitioner pay counsel fees and costs to the wife in the amount of $75,000; 5. the petitioner surrender his passport; 6. the petitioner be enjoined from leaving the jurisdiction of the Commonwealth of Pennsylvania; and 7. the matter be referred to the District Attorney's office and the United States Attorney's office for consideration of possible prosecution of criminal charges.

The petitioner appealed the order to the Pennsylvania Superior Court, which quashed the appeal in part as interlocutory on December 9, 1994, and in full on February 16, 1995.

On August 2, 1994 the wife filed a petition for contempt and for writ of *ne exeat* (forbidding the petitioner from leaving the jurisdiction) or for a writ of *capias ad satisfaciendum* (a writ of execution commanding the sheriff to take the party and keep him safely so that he may appear in court to satisfy the damages or debt, and deprives him of liberty until the debt is satisfied). In the petition the wife alleged that the petitioner failed to place $2,500,000 in escrow, failed to pay attorney's fees, failed to co-opereate with the sale of the marital residence, and failed to surrender his passport. She further alleged that she feared he would flee the country because $995,726.41 of the transferred funds were allegedly in an account in Luxembourg. She requested that the petitioner be incarcerated until he posted adequate security.

A hearing was held on August 29, 1994, for which the petitioner did not appear, but was represented by counsel. Counsel for the petitioner objected to the proceedings, especially since the appeal of the July 22, 1994 order was pending before the Superior Court. A bank employee testified that the petitioner was redeeming insurance policies and having the proceeds sent to himself. At the conclusion of the hearing the court entered an order finding the petitioner to be in contempt of court for failure to comply with the court's orders of April 29, 1994 and July 22, 1994. The court further directed that the petitioner's accounts be frozen and any funds in those accounts be paid to wife's attorney. The petitioner appealed this order to the Superior Court, which quashed the

appeal as the order was interlocutory on November 22, 1994.

On September 30, 1994 the wife filed another petitioner for *ne exeat*, alleging that it was necessary to detain the petitioner before he fled the jurisdiction. A hearing was held on October 18, 1994, which the petitioner failed to attend, but was represented by counsel. The *ne exeat* action was converted to a contempt proceeding, and a further hearing was held on October 31, 1994. The petitioner was personally served with a subpoena, and again failed to attend the hearing, but was represented by counsel. At the conclusion of the hearing the petitioner was again found in contempt for failing to comply with the terms of the July 22, 1994 order, and the court directed that he be found and arrested. By order dated November 2, 1994 the court issued a bench warrant for the petitioner's arrest and imprisonment until a further hearing was held.

The petitioner appealed the November 2, 1994 order to the Superior Court, which quashed the appeal as interlocutory on February 16, 1995.

Prior to the petitioner's arrest pursuant to the November 2, 1994 order, a conference setting a trial date for the economic claims of the divorce complaint was held on January 6, 1995. During that conference the court told the petitioner that he could purge himself of his contempt by producing $800,000.

On April 5, 1995 the petitioner was arrested for contempt, and has been incarcerated since April 6, 1995.

This case has an extensive history in the state court. On March 24, 1995, prior to his arrest, the petitioner filed

an emergency petition for vacation of sanctions of incarceration and bench warrant, alleging that: 1. the court's finding of contempt was improper in that it was not made in accordance with a proper procedure for a finding of contempt set forth in state case law, and that he was found in contempt for failing to perform that which he could not perform, i.e. the repayment of $2,500,000; 2. the order of incarceration was improper because a person may not be jailed under state law for the non-payment of money, and that a person may not be jailed for failure to obey a subpoena until such person has a hearing; and 3. he was deprived of his right to due process because he received inadequate notice prior to the July 22, 1994 and October 31, 1994 hearings, and that no evidence was taken regarding his contempt. A hearing was scheduled on this petition on April 12, 1995 after several postponements. In the meantime, the petitioner was arrested on the bench warrant and contempt order.

The emergency petition was denied following the April 12 hearing, and bail was set in the amount of $3,000,000 cash. Another hearing was held on April 20, 1995, and again the petitioner's request for release from prison was denied by order dated April 21, 1995.

The petitioner filed a timely appeal of this order with the Superior Court, raising the issues he presented in his emergency petition, and the following additional claims: 1. he was being detained beyond the time allowed by law because state statutory law allegedly provides for incarceration for *criminal* contempt may last no longer than fifteen days; 2. the Court of Common Pleas lacked the authority under the Pennsylvania Divorce Code to order the petitioner to pay into court assets already paid by him to satisfy a debt; 3. the court lacked the jurisdiction to

enter a contempt order based on relief set forth in the July 22, 1994 order when that order was on appeal to the Superior Court; 4. the contempt order did not specify how the petitioner could purge the contempt; and 5. incarceration for *civil* contempt is improper under state statutory law unless the contempt was committed in open court. By order dated August 22, 1996 the Superior Court affirmed in part, and quashed the remaining claims. The petitioner sought discretionary review in the Pennsylvania Supreme Court, which denied his request by order dated April 8, 1997.

Meanwhile, on or about April 21, 1995 the petitioner filed an application for extraordinary relief in the nature of a writ of prohibition in the Pennsylvania Supreme Court. His sole claim was that he was being incarcerated beyond the time allowed by law, alleging that he was being held for criminal contempt rather than civil contempt, and that state law provides that persons held for indirect criminal contempt may be held no longer than fifteen days. The Supreme Court denied the request on May 3, 1995.

On May 22, 1995 the petitioner filed a petition for special relief in the Court of Common Pleas requesting review of the July 22, 1994 and November 2, 1994 orders, as well as the lawfulness of his incarceration. That petition was denied on May 25, 1995.

The petitioner filed his first state habeas corpus petition on July 21, 1995, and a hearing was scheduled the next day. The petitioner testified that he no longer had control over the money to satisfy the court's July 22, 1994 order. The court refused to re-litigate the issue of the petitioner's credibility, and it did not accept the

petitioner's argument that his incarceration had become punitive rather than coercive. Thus, the court denied his petitioner.

The petitioner filed a motion for review of that order and an application for bail with the Superior Court, which was denied.

On July 25, 1995 the petitioner filed his second state habeas action, raising the same issues he raised before the Superior Court on appeal from the April 21, 1995 order, plus allegations that his incarceration violated state law and his Constitutional rights to due process and equal protection. It appears that a hearing was held on July 31, 1995 and continued to August 8, 1995. The petitioner filed three additional state habeas actions, all of which were denied. The denials were consolidated for appeal in the Superior Court, which affirmed the lower court.

The petitioner filed a sixth state habeas action seeking relief on the grounds that his imprisonment for contempt was punitive and there was no substantial likelihood that he would comply with the court's order because of his age, poor health, inability to practice law, lack of control over the assets, and the length of incarceration demonstrates that nothing will cause his compliance. Hearings were held on May 30 and June 3, 1996, after which the trial court denied the petition, adopting the findings of the five prior habeas courts regarding the petitioner's refusal to comply with the court order. The court concluded that the petitioner failed to provide any credible evidence that he had the inability to comply with the order.

The petitioner filed a timely appeal with the Superior Court, raising the following claims: 1. the writ should be

granted because civil contempt is no longer coercive in nature, but punitive in violation of due process; and 2. the trial judge erred in denying the petition after the petitioner demonstrated that he was unable to comply with the purging condition of the contempt. The Superior Court affirmed the decision of the trial court in a memorandum opinion filed April 23, 1997. In part, that opinion stated:

> Instantly, appellant cites to the fact that he has been incarcerated since April 5, 1995. He claims the length of his incarceration, his age, poor health, inability to pursue his career and repeated hearings where he has refused compliance suggests that there is no possibility that he will comply with the order. Appellant admits that no court in this jurisdiction has adopted this test and we will not do so here. While it seems reasonable that at some point a temporal benchmark should be adopted to determine when contempt incarceration becomes impermissibly punitive we think that it is for our high court to make such a determination.

Opinion, at 5-6. Despite the Superior Court's invitation to the state Supreme Court to decide the point at which contempt incarceration becomes punitive rather than coercive, the petitioner did not seek discretionary review by the state Supreme Court.

FEDERAL COURT PROCEEDINGS:

Meanwhile, two days after his arrest the petitioner filed an emergency motion in the United States District Court for the Eastern District of Pennsylvania seeking his release from prison pursuant to 42 U.S.C. § 1983. The

Honorable Norma L. Shapiro held an *ex parte* hearing, after which the Court determined that it should abstain from interference in a state matter pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). By way of further explanation, the Court stated in a Memorandum dated April 18, 1995 that it would not grant the petitioner's emergency relief because: 1. a federal court should abstain from exercising jurisdiction in a pending state domestic relations matter involving divorce and equitable distribution of marital property; 2. the petitioner failed to allege irreparable harm in that he did not provide evidence or alleged that he challenged his incarceration or the court orders underlying his being held in contempt to the full extent in state court, or that there was any reason to conclude that the state courts would not uphold his Constitutional rights; 3. there is no justification for federal disregard of state court orders except under extraordinary circumstances, which the court did not find; and 4. it would not be in the public interest to countenance a party's willful failure to obey a subpoena to appear in court for personal reasons or to countenance a party's violation of a state court order.

On or about June 1, 1995 the petitioner filed an "Emergency Petition for Injunctive Relief or, in the Alternative, for Habeas Corpus" in this Court. He raised the following claims for relief: 1. the Court of Common Pleas exceeded its power under applicable law when it ordered him to pay $2,500,000 into court; 2. contempt may not be used to enforce the payment of money; 3. he was unable to comply with the order; 4. the adjudication of contempt did not comply with the five-step procedure regarding contempt matters required by state law; 5. he did not receive proper notice of or the opportunity to defend himself at the contempt proceeding because no petition was filed or

served on him which set forth the relief sought or basis thereof; 6. He is imprisoned for debt in violation of the Pennsylvania Constitution; 7. his incarceration exceeded the maximum term for criminal contempt; 8. the contempt order does not set forth the conditions for which the contempt may be purged; and 9. the incarceration for contempt for failure to obey a subpoena is contrary to the provisions of the Pennsylvania Rules of Civil Procedure. In his brief he raised additional issues: 10. the Court of Common Pleas lacked the jurisdiction to enter an order of contempt for failure to obey an order which was under appeal; and 11. his incarceration violates 42 Pa.C.S.A. §§ 4132 and 4133.

In a Report and Recommendation filed by the United States Magistrate Judge James R. Mellinson dated August 15, 1995 he recommended that the § 1983 action be denied and the habeas action be dismissed for failure to exhaust state court remedies. By order dated September 8, 1995, the Honorable Norma L. Shapiro denied relief under 42 U.S.C. § 1983, and dismissed the habeas action without prejudice for failure to exhaust state court remedies.

On September 23, 1996 the petitioner filed a petition for writ of habeas corpus in this Court alleging that his incarceration violates the Fifth and Fourteenth Amendment guarantees of due process because the order is no longer coercive, but punitive, and that he is unable to comply with the purging condition because he no longer has control of the funds. Chief United States Magistrate Judge Richard A. Powers, III filed a Report and Recommendation on November 1, 1996 recommending that the petition be dismissed for failure to exhaust state court remedies. The petitioner filed objections to the Report and Recommendation. After an independent review, the

Honorable Norma L. Shapiro dismissed the petition without prejudice for failure to exhaust state court remedies by order dated January 16, 1997. The Petitioner filed a Petition for Reconsideration, which was denied by Judge Shapiro on May 23, 1997. In her opinion, Judge Shapiro wrote:

> 9. The Superior Court in denying Mr. Chadwick's Sixth Petition for Writ of Habeas Corpus invited the Pennsylvania Supreme Court to set a temporal benchmark for when incarceration for civil contempt becomes impermissibly punitive; petitioner has not yet exhausted all state avenues of relief as he has not yet filed a Petition for Allowance of Appeal from the Pennsylvania Superior Court's April 23, 1997 ruling.
>
> 10. Petitioner's sixth Petition for Habeas Corpus has not been reviewed by the Pennsylvania Supreme Court and the question of when civil contempt becomes impermissibly punitive is one which a federal court should abstain from considering before the state supreme court has had the opportunity. *See Younger v. Harris*, 401 U.S. 37 (1971); *Hoffman v. Pursue, Ltd.*, 420 U.S. 592 (1975).

Order, May 23, 1997, at 1-2.

On July 18, 1997 the petitioner filed another petition for federal habeas relief on the grounds that: 1. he was denied his right to a jury trial; 2. he was denied the presumption of innocence and other fundamental rights available to persons when serious penalties are imposed; 3. his imprisonment for an indefinite period of time violates his right to due process; 4. his imprisonment to force payment of money in a civil dispute violates his rights to

due process and equal protection of the law; 5. his imprisonment in the absence of a stated condition for his release is unlawful; 6. he was denied due process in that his appeals were quashed as interlocutory, and he received no notice of the October 31, 1994 hearing; 7. he was denied the ability to prepare for and funds to employ counsel to represent him in the proceedings challenging his imprisonment when the court ordered half of the funds realized from the sale of the marital residence to be paid to wife's counsel; and 8. the Pennsylvania Divorce Code does not authorize the augmentation of property.

The District Attorney of Delaware County was joined and filed a Response. Barbara Jean Crowder Chadwick, the petitioner's wife, filed a Motion to Intervene, which was granted, and a Motion to Dismiss the Petition, which I recommended be granted and the petition be dismissed due to the petitioner's failure to exhaust his state court remedies, as set forth in a Report and Recommendation. The petitioner filed a Motion for Bail, which was denied. He filed exceptions to the Report and Recommendation, which Judge Shapiro reviewed, and overruled the objections, dismissing the petition for failure to exhaust state court remedies. Judge Shapiro stated that as long as there was an opportunity for the state court to address the issue of when detention for civil contempt becomes punitive, the petitioner had not exhausted his state court remedies. Judge Shapiro wrote:

> Although Mr. Chadwick has forfeited his right to seek Supreme Court review of the Superior Court's April 23, 1997 denial of his sixth state habeas petition, see Pa.R.App.P. 1113(a) (petition for allowance of appeal must be filed within 30 days of order), he would not be barred from

> filing a seventh state habeas petition based on his present confinement of approximately thirty-seven months. Under Pennsylvania law, Mr. Chadwick can file a seventh state habeas petition in the court of common Pleas and exhaust his appellate remedies. see 42 Pa.Cons.Stat.An. §931, or petition directly in the Supreme court, which has original jurisdiction over habeas corpus proceedings. See 42 Pa.Cons.Stat.An. §721(1). But unless the issues presented in the federal habeas petition have all been first presented to the Supreme Court, the district court may not exercise jurisdiction. See *Lambert*, 134 F.3d at 515 (requiring "complete exhaustion"); *Swanger*, 750 F.2d at 295 (raising claim before Supreme Court in petition for allowance of appeal satisfies exhaustion requirement).

Because the petitioner had not sought review in the Pennsylvania Supreme Court on this issue, his petition was dismissed without prejudice.

Although he had previously been represented by counsel, in September 1999 the petitioner filed a *pro se* Application for Leave to File Original Process (his seventh state habeas action) with the Pennsylvania Supreme Court. Wife sought permission to intervene, and opposed the application and the state habeas petition. In a per curiam order dated February 8, 2000 the Supreme Court granted the request to file original process and the request to file an answer, and denied the petition for habeas corpus.

In the meantime, the petitioner filed a counseled petition for release in the Delaware County Court of Common Pleas, alleging that he was suffering from "major psychological depression" causing him to be unable to

participate in his divorce litigation. The Honorable Joseph Battle held a full hearing, which included testimony of several witnesses and two forensic psychiatrists. In an opinion and order dated September 22, 1999, Judge Battle stated that he was "convinced that Mr. Chadwick is feigning mental illness in an effort to be released from prison without returning the $2,500,000 which he transferred out of this country". The petitioner did not appeal Judge Battle's decision.

On March 2, 2000 the petitioner filed the instant petition for federal habeas relief on the grounds that:

1. His imprisonment for civil contempt is impermissibly punitive;

2. He was denied due process by imprisonment for noncompliance with an order with which he was unable to comply;

3. He was denied due process because he was denied a right to a jury trial and other procedural rights;

4. He was denied due process by the summary nature of the proceedings which adjudicated his imprisonment;

5. He was denied due process by imprisonment where the imprisonment has become punitive;

6. He was denied due process by imprisonment for failure to pay money;

7. He was denied due process by imprisonment indefinitely in a civil action;

8. He was denied due process since the order of imprisonment is unlawful on its face;

9. He was denied due process by imprisonment for alleged violations on an order which the court lacked jurisdiction to issue; and

10. He was denied due process by the denial of a prompt appeal.

DISCUSSION

Before a Federal Court may consider the merits of a state prisoner's petition for writ of habeas corpus, the petitioner must exhaust all state remedies available to him as to each claim upon which relief is sought, 28 U.S.C. § 2254(c). See also *Picard v. Connor*, 404 U.S. 270, 275 (1971); *Brown v. Cuyler*, 669 F.2d 155, 157 (3d Cir. 1982); 28 U.S.C. 2254(c). The policy behind the total exhaustion doctrine is rooted in our tradition of comity: the state must be given the "initial opportunity to pass upon and correct" alleged violations of petitioner's constitutional rights. *Picard v. Connor, supra*, at 275, citing *Wilwording v. Swenson*, 404 U.S. 249, 250 (1971).

Each constitutional claim sought in petitioner's habeas petition must be exhausted. *Tillett v. Freeman*, 868 F.2d 106 (3d Cir. 1989); see 28 U.S.C. 2254(c). Exhaustion of state remedies ordinarily requires petitioner to have fairly presented his constitutional claims to the highest state court. *Chaussard v. Fulcomer*, 816 F.2d 925, 928 (3d Cir. 1987) (Fair presentment requires that before a particular claim may be asserted in federal court, the same method of analysis must have been made available to the state court.) *Castile v. Peoples*, 489 U.S. 346 (1989); *Swanger v. Zimmerman*, 750 F. 2d 291 (3d Cir. 1984). Although exhaustion does not require that the highest state court rule on the merits of petitioner's claims, it does

require that the court be given the opportunity to review them. *Bond v. Fulcomer*, 864 F.2d 306 (3d Cir. 1989). A petitioner "shall not be deemed to have exhausted the remedies available . . . if he has the right under the law of the state to raise, by any available procedure, the question presented." 28 U.S.C. 2254(c). The petitioner has the burden of proving all facts entitling him to a discharge as well as demonstrating that he has met all procedural requisites entitling him to relief. *Lambert v. Blackwell*, 134 F.3d 506 (3d Cir. 1998); *Brown v. Cuyler*, 669 F.2d 155, 158 (3d Cir. 1982).

The respondent and intervenor argue that this petition should be dismissed for failure to exhaust state court remedies under 28 U.S.C. §2254(c) and *Castile*, which require "fair presentation" of all issues to the state court prior to seeking federal habeas review. They argue that by filing a *pro se* state habeas petition directly with the Pennsylvania Supreme court without the record of the previous state court actions, the petitioner denied the state court a fair opportunity to evaluate the issues presented, especially a determination of when incarceration under a civil contempt order becomes punitive. It is unclear from the record why, although several of the petitioner's previous habeas petitions were counseled, the last one filed directly with the state Supreme Court was *pro se*, especially in light of the Superior Court requested [sic] that the Supreme Court review the petitioner's due process argument regarding the length of his incarceration.

The petitioner argues that in her April 30, 1998 Order, Judge Shapiro wrote:

> Although Mr. Chadwick has forfeited his right to seek Supreme Court review of the Superior Court's April 23, 1997 denial of his sixth state habeas petition, see Pa.R.App.P. 1113(a) (petition for allowance of appeal must be filed within 30 days of order), he would not be barred from filing a seventh state habeas petition based on his present confinement of approximately thirty-seven months. Under Pennsylvania law, Mr. Chadwick can file a seventh state habeas petition in the Court of common Pleas and exhaust his appellate remedies, see 42 Pa.Cons.Stat.Ann. §931, or petition directly in the Supreme court, which has original, but not exclusive, jurisdiction over habeas corpus proceedings, see 42 Pa.Cons.Stat.Ann §721(1). But unless the issues have all been first presented to the Supreme Court, the district court may not exercise jurisdiction. See *Lambert*, 134 F.3d at 515 (requiring "complete exhaustion:); *Swanger*, 750 F.2d at 295 (raising claim before Supreme Court in petition for allowance of appeal satisfies exhaustion requirement). (emphasis added).

1998 WL 218026, at 5.

As the petitioner points out, in stating that the [sic] he may file a state habeas petition directly in the state Supreme Court, Judge Shapiro has created the "law of the case" for this petitioner. *Arizona v. California*, 460 U.S. 605 (1983); *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800 (1988). Although it is dubious whether the petitioner's *pro se* petition filed with the state Supreme Court under its power of original jurisdiction complies with the requirement of fair presentation of the issues to the state court, it is the law of this case, and thus the petitioner must be considered to have exhausted his state

court remedies. Accordingly, this petition shall be considered on its merits.

This case must be decided pursuant to the terms of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub.L. 103-132, 110 Stat. 1214 (enacted April 24, 1996). Section 104(2) of the AEDPA amended 28 U.S.C § 2254, the statute under which this petition was filed, requires the federal courts to give greater deference to a state court's legal determinations.

Section 2254(e) provides that a state court's factual findings "shall be presumed to be correct" and further provides that a habeas petitioner "shall have the burden of rebutting the presumption of correctness by clear and convincing evidence". *Berryman v. Morton*, 100 F.3d 1089 (3d Cir. 1996). Section 2254(d), as amended by the AEDPA, requires a petitioner seeking federal habeas relief to "show that the state court's decision was contrary to clearly established case law by the [United States] Supreme Court, or alternatively, that the state court's decision was an unreasonable application of Supreme Court case law." *Dickerson v. Vaughn*, 90 F.3d 87, 90 (3d Cir. 1996). These standards apply to questions of law or mixed questions of law and fact. *See also Drinkard v. Johnson*, 97 F.3d 751 (5th Cir. 1996); *Lindh v. Murphy*, 96 F.3d 856 (7th Cir. 1996), *rev'd on other grounds*, 117 S.Ct. 2059 (1997).

The Third Circuit held in *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877 (3d Cir. 1999) (*en banc*) that § 2254(d) requires a two-step analysis:

> First, the federal habeas court must determine whether the state court decision was "contrary to" Supreme Court precedent that governs the

> petitioner's claim. Relief is appropriate only if the petitioner shows that "Supreme Court precedent requires an outcome contrary to that reached by the relevant state court." *O'Brien*, 145 F.3d at 24-25. In the absence of such a showing, the federal habeas court must ask whether the state court decision represents an "unreasonable application of" Supreme court precedent: That is, whether the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified.

Matteo, 171 F.3d at 891.

To meet the *Matteo* "contrary to" test, the petitioner must not merely show that his interpretation of Supreme Court precedent is more plausible than that of the state court, nor that there is a simple disagreement with a reasonable state court interpretation of applicable precedent. In order for a petitioner to obtain federal habeas relief he "must demonstrate that the Supreme Court precedent requires the contrary outcome." *Id.* (emphasis in original).

The "unreasonable application" standard, does not allow a federal habeas court to grant a writ just because it disagrees with the state court decision, or because it would have reached a different result. "The appropriate question is whether the state court's application of Supreme Court precedent was objectively unreasonable. The federal habeas court should not grant the petition unless the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot be justified under existing Supreme Court precedent." *Matteo*, at 889-90. The Third Circuit went on to state that although habeas courts are not precluded from considering the decisions of lower

federal courts when determining whether the state court's application of Supreme Court precedent was reasonable, "federal courts may not grant habeas corpus relief based on the state court's failure to adhere to the precedent of a lower federal court on an issue that the United States Supreme Court has not addressed." *Id.*

More recently, the United States Supreme Court held in *Williams v. Taylor*, 120 S.Ct. 1479 (April 18, 2000) that in order for a petitioner to prevail in a federal habeas action, he must satisfy either the "contrary to" clause or the "unreasonable application clause" of 2254(d)(1). In order to satisfy the "contrary to Clause" the petitioner must prove that the state court arrived at a conclusion opposite to that reached by the Supreme Court on a question of law, or if the state court decided a case differently from the decision of the Supreme Court on materially indistinguishable facts. Under the "unreasonable application clause" a federal habeas court may not issue the writ simply because, in its independent judgment, the state court applied clearly established law erroneously or incorrectly.

In support of his claims that his due process rights were violated, the petitioner relies heavily on *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 S.Ct. 2552 (1994), hereinafter referred to as "*Bagwell*". He claims that "under *Bagwell*, so far as the process which is due is concerned, the analysis no longer focuses on whether the [contempt] proceeding is civil or criminal, but on the *seriousness* of the penalty. Where the penalty is serious, (1) a jury trial must be afforded, and (2) the burden of proof is the criminal standard." Petitioner's Opening Memorandum at 5. He argues that under *Bagwell* he was entitled to a jury trial, the

presumption of innocence, proof beyond a reasonable doubt, the burden of which was on the opposition. He also alleges that under *Bagwell* his continued imprisonment is impermissibly punitive and not coercive, because the length of the imprisonment has transformed the purpose of the sanction from coercion to punishment.

As *Bagwell* is one of the lynchpins in the petitioner's case, a careful examination of that case is warranted. The petitioners in *Bagwell* were the International Union, United Mine Workers of America and United Mine Workers of America District 28 (hereinafter the union), who were engaged in a protracted labor dispute with the Clinchfield Coal Company and Sea "B" Mining (hereinafter the companies) in Virginia. An injunction was issued, which prohibited the union and its members from obstructing ingress and egress to company facilities, throwing objects at and physically threatening company employees, placing tire-damaging "jackrocks" on the road used by company vehicles, and picketing with more than a specified number of people at designated sites. The court instructed the union to place supervisors at all sites, and report any violations to the court.

The trial court held a contempt hearing and determined that the union had committed seventy-two violations of the injunction, for which the union was fined $642,000. The court stated that the union would be fined $100,000 for any future violent violations, and $20,000 for future non-violent violations. Seven subsequent civil contempt hearings were held, resulting in findings of more than four hundred separate violations of the injunction, many of them violent. The court levied a fine against the union in the amount of more than sixty-four million

dollars approximately twelve million to be paid to the companies, and the remainder to the commonwealth. The union appealed.

While that appeal was pending, the underlying labor dispute was resolved, and the parties agreed to vacate the contempt fines and dismiss the case. The court vacated its order for the twelve million dollar fine to the companies. However, believing that the fifty-two million dollars owed to the commonwealth was a coercive civil fine, the court refused to vacate that fine, which it concluded were payable to the public. The union appealed.

The Court of Appeals of Virginia reversed, and ordered the contempt fines be vacated pursuant to the settlement agreement, on the reasoning that "civil contempt fines imposed during or as a part of a civil proceeding between private parties are settled when the underlying litigation is settled by the parties and the court is without discretion to refuse to vacate such fines." *Mine Workers v. Clinchfield Coal Co.*, 12 Va.App. 123, 133, 402 S.E.2d 899, 905 (1991).

The Supreme Court of Virginia reversed, holding that public policy disfavored parties settling coercive civil fines. The court also rejected the union's contention that the fines were criminal and could not be imposed without a criminal trial, finding that the fines were intended to coerce compliance with the terms of the injunction, and the union could have avoided the fines by obeying those terms. The United States Supreme Court granted *certiorari*.

The Supreme Court reversed the decision of the Virginia Supreme Court, finding that the fines imposed were criminal in nature, and thus the union was entitled

to the safeguards commensurate with other criminal proceedings. In making that determination, the Court found that the fines were punitive in the criminal sense, rather than coercive or compensatory in the civil sense. By way of example, the Court found that certain indirect contempts involving out-of-court disobedience to complex injunctions often require intensive factfinding. Under those circumstances criminal procedural protections such as the right to counsel and proof beyond a reasonable doubt are necessary to protect the due process rights of the parties, and prevent the arbitrary exercise of judicial power. The Court noted the possibility of denial of due process when the offended judge had the unlimited power to identify, prosecute, adjudicate and sanction the contemnor.

The Court also set forth criteria for the determination of true civil contempt. It reaffirmed the holding in *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 31 S.Ct. 492 (1911), which defined a civil contempt sanction if it is "remedial, and for the benefit of the complainant." *Id.* at 441. The Court stated "The paradigmatic coercive, civil contempt sanction, as set forth in *Gompers*, involves confining a contemnor until he complies with an affirmative command such as an order 'to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance'". *Bagwell*, at 828. When "the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus 'carries the keys of his prison in his own pocket.'" *Gompers*, at 442, quoted in *Bagwell*, at 828. Thus if the contemnor is afforded the ability to purge his contempt, the contempt is civil, and not subject to the same requirements of due process as a criminal proceeding. The Court went on to

state, "Because civil contempt sanctions are viewed as nonpunitive and avoidable, fewer procedural protections for such sanctions have been required. To the extent that such contempts take on a punitive character, however, and are not justified by other considerations central to the contempt power, criminal procedural protections may be in order." *Id.* at 831. "Indirect contempts involving discrete, readily ascertainable acts, such as turning over a key or payment of a judgment, properly may be adjudicated through civil proceedings since the need for extensive, impartial factfinding is less pressing." *Id.* at 833. The Court also noted that if the fine is compensatory rather than punitive, the contempt is civil. Thus, even after *Bagwell*, the Court recognizes the concepts of both civil and criminal contempt.

In the instant case, the petitioner argues that the *Bagwell* Court abandoned the concept of civil contempt where due process is concerned, and focused on the concept of the seriousness of the penalty. He claims that where the penalty is serious, a jury trial must be afforded and the burden of proof is the criminal standard. He alleges that a sixty-month sentence is sufficiently serious to warrant criminal due process protection. This is not the case. Firstly, *Bagwell* is easily distinguishable from this case in that it involved a *fine imposed by the court.* Here the petitioner was ordered to remit marital funds to the court, or serve an indefinite term of imprisonment until he complied with the court's order. There was no fine imposed. Secondly, the petitioner could have purged himself of his contempt at any time by complying with the court's order. The fact that the petitioner has now served sixty-seven months in the Delaware County Prison is no fault of anyone but the petitioner himself. Thirdly, the payment

was not punitive, but compensatory. The court ordered that marital funds subject to equitable distribution in a divorce action should be deposited with the court to assure that the intervenor/wife would have access to them. It must be noted that the court only took this action after: 1) petitioner/husband caused the funds to be sent outside the country under false pretenses and then returned for his sole benefit; and 2) multiple hearings on the existence of those funds. At those hearings the petitioner claimed, as he does here, that the funds do not exist; however, the intervenor produced evidence of the existence and location of those funds. The petitioner produced no evidence that countered that presented by the wife. Therefore, the compensatory component discussed in *Bagwell* is present here. The petitioner's arguments that his imprisonment for civil contempt is impermissibly punitive, and that he was entitled to a jury trial and other remedies under *Bagwell* are without merit.

The petitioner next claims that his due process rights were violated because he is unable to comply with the court order. As noted above under the AEDPA and applicable case law, great deference is given the findings of the state court regarding the facts of a case. In this case, the petitioner had numerous hearings, where evidence was presented regarding the existence and location of the $2.5 million in question. The petitioner produced no evidence to counter that presented by the intervenor, and the trial court found her evidence to be credible. Since the original hearings, the petitioner has been no stranger to the state court system, but has provided no evidence to support his contention that he cannot comply with the order, except for his own unsubstantiated statements. Additionally, he has produced no evidence before this Court to support his

claim that he is unable to comply with the order. In the absence of compelling evidence to the contrary, this Court is bound by the factual conclusions of the state court. Thus, this claim is without merit.

The petitioner next argues that he was denied due process by reason of indefinite unlimited civil contempt, which has caused his imprisonment for more than five years. As noted above, the petitioner has always had "the keys to his prison in his own pocket". The petitioner argues that the court denied his right to due process by subjecting him to non-criminal confinement; however, the court did not determine the length of the petitioner's incarceration. Under the court order, the petitioner could have served no time in prison, or been released within days. Again, it is not the court which has caused the petitioner to be incarcerated for such a long period of time, but rather his own refusal to comply with the court order. The petitioner cites *Foucha v. Louisiana*, 504 U.S. 71 (1992), which involves incarceration of a mentally ill individual; *Kansas v. Hendricks*, 117 S.Ct. 2072 (1997), which involves civil confinement of a sexual predator; and *United States v. Salerno*, 481 U.S. 739 (1987), which relates to the pre-trial detention under the Bail Reform Act. None of these cases are relevant here.

If the petitioner's position were adopted by this Court, any contemnor could merely be stubborn and wait for sufficient time to pass, thus avoiding compliance with legitimate court orders with impunity. This is not an acceptable result. Court orders are the only management tool the court has for the efficient and effective administration of justice. Litigants cannot be allowed to decide which contempt orders should be obeyed, and which should be ignored and invalidated merely by the passing of

time. For this petitioner to argue that he is being denied due process by remaining in prison for more than five years when he could purge himself of the contempt at any time is incomprehensible, and without merit. The state court determined that the petitioner's wife proved that she had a right to equitable distribution of the funds in question, and that those funds would more than likely disappear without court intervention. The state court concluded that the only way to protect the rights of the intervenor was for the court to assume control over the marital funds until an appropriate distribution could be made under the Divorce Act. In making that determination, the court acknowledged that the rights of the intervenor were in need of protection. Now, the petitioner argues that his rights are being violated because of his refusal to comply with the court's order. However, it is not up to the petitioner to decide that his rights are superior to those of his wife; that determination is the court's to make, and after repeated hearings over the past five years, the state court has made that decision. As noted above, the petitioner has presented no evidence to the contrary, therefore, this claim must be denied.

The petitioner next argues that he was denied due process because the proceedings which resulted in the contempt lacked the attributes of a full trial. After a hearing the petitioner was ordered to return the $2.5 million on July 22, 1994. He failed to do so, and after a hearing on October 31, 1994 he was found in contempt of the July 22, 1994 order, and on November 2, 1994 an order to that effect was entered. As noted above in the procedural history, the petitioner had continuous access to the court. In *Bagwell*, the Supreme Court held that in cases of civil contempt, the contemnor was not entitled to a full

trial. The petitioner was given notice of all hearings, and thus his due process rights were not abridged.

The petitioner next argues that he was denied due process because he is imprisoned for the purpose of compelling the payment of money. This claim has no merit. The cases cited by the petitioner involve incarceration of individuals as a collection tool in order to extract payments of judgments. There is no debt here. The court is not attempting to deprive the petitioner of money, but merely to assure that it is available to be equitably divided under the terms of the Pennsylvania Divorce Code. By his past conduct the petitioner made it clear to the state court, and this Court as well, that without the protection of the state court, there would be no assets available to be divided for the benefit of the intervenor. As this is not incarceration for the purpose of collecting money, the petitioner's claim is without merit.

The petitioner next argues that he was denied due process because the order under which he is incarcerated provides no condition upon which his imprisonment will terminate. The petitioner alleges that under the terms of the contempt order directed that the petitioner be imprisoned "until a further hearing is held". While this is true, the petitioner has had several hearings since that order was entered. The order states, *inter alia*, that the petitioner must deposit $2.5 million with the court and surrender his passport. It is clear from all of the many prior proceedings in this case that once the petitioner complies with the terms of the order, such as depositing the funds with the court and surrendering his passport, he will purge himself of the contempt.

At his last state court hearing he alleged that he was suffering from major psychological depression causing him to be unable to participate fully in his divorce litigation. After a full hearing with several witnesses, including two forensic psychiatrists, the court concluded that the petitioner was feigning mental illness in an effort to be released from prison without complying with the order regarding the return of the $2.5 million. Again, the court determined that the plaintiff had the ability but not the desire to comply with the court order. In fact, the petitioner has refused, and continues to refuse to comply with any of the terms of the July 22, 1994 order. Accordingly, this claim is also without merit.

The petitioner's ninth claim for relief is the allegation that he was denied due process in that his imprisonment arises from the alleged non-compliance with an order which the state court lacked jurisdiction to enter. He claims that the court entered the order pursuant to the general equity powers set forth in §3323(f) of the Divorce Code, which he claims allows injunctions to prevent the transfer of marital property, and authorizes constructive trusts upon marital property improperly transferred to third parties, but does not permit the augmentation of marital property prior to an equitable distribution hearing.

The petitioner raised this issue repeatedly in the state court, and each time the state court found the order to be within the parameters of the statute. The United States Supreme Court held in *Estelle v. McGuire*, 502 U.S. 62 (1991) that federal habeas relief does not lie for errors of state law. "[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is

limited to deciding whether a state conviction violated the Constitution, laws, or treaties of the United States." *Estelle*, at 67-68. *See also Pulley v. Harris*, 104 U.S. 37, 104 S.Ct. 871 (1984); *Lewis v. Jeffers*, 497 U.S. 764, 110 S.Ct. 3092 (1990); *Engle v. Isaac*, 456 U.S. 107 (1982). As the Divorce Code is a creature of state law, it is not within the purview of a federal habeas court to second-guess or revisit a state court's action regarding a determination of state law. Thus, this claim must be dismissed.

The tenth and final ground on which the petitioner seeks federal habeas relief is the allegation that the intervenor misstated the record to advance the punitive incarceration of her husband. He claims that the intervenor's motion to dismiss for failure to exhaust state court remedies misstates the record in that the intervenor participated in the last state habeas action filed in 1999 with the Pennsylvania Supreme Court. As noted above, I am bound to conclude that this petitioner has exhausted his state court remedies based on Judge Shapiro's order of April 30, 1998. Therefore, the intervenor's motion to dismiss on the grounds of failure to exhaust state court remedies should be denied.

The District Attorney of Delaware County has filed a motion to be removed from the caption of this case, and deleted as a respondent. He bases his request on the fact that, unlike most habeas petitions brought under §2254, this petitioner was never convicted of a crime, and thus the District Attorney has no connection with the case. As the wife has been permitted to intervene in these proceedings, thus providing her an opportunity to protect her interests, and does not object to the respondent's request, there is no need for the District Attorney to participate in

this litigation. Thus, the District Attorney's motion to withdraw should be granted.

Based on the foregoing, this petition should be denied and dismissed on its merits. Accordingly, I make the following:

RECOMMENDATION

AND NOW, this 8 day of December, 2000, IT IS RESPECTFULLY RECOMMENDED, that the Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, be DENIED AND DISMISSED, and the District Attorney's motion to be removed as a respondent be GRANTED. There is no probable cause to issue a certificate of appealability.

BY THE COURT:

/s/ Arnold C. Rapoport
ARNOLD C. RAPOPORT
UNITED STATES
MAGISTRATE JUDGE

ENTERED: 12/11/00

CLERK OF COURT